

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, : Case No. 3:06-cr-154; 3:13-cv-292
: :
Plaintiff, : Judge Timothy S. Black
: Magistrate Judge Michael R. Merz
vs. : :
THOMAS L. MCCUALEY, : :
Defendant. : :

**DECISION AND ENTRY: (1) ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE MAGISTRATE JUDGE (Doc. 121); (2) DISMISSING DEFENDANT'S MOTION
TO VACATE (Doc. 119) WITHOUT PREJUDICE; (3) DENYING ANY REQUESTED
CERTIFICATE OF APPEALABILITY; AND (4) CERTIFYING THAT AN APPEAL
WOULD BE OBJECTIVELY FRIVOLOUS**

This case is before the Court on the Report and Recommendations of United States Magistrate Judge Michael R. Merz. (Doc. 121). The Magistrate Judge recommends that the Motion to Vacate be dismissed without prejudice for lack of jurisdiction. Defendant did not file any objections to the Report and Recommendations and the time for doing so has expired.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered the issues presented *de novo*. Based on that review, the Court: (1) **ADOPTS** the Report and Recommendations (Doc. 121) in its entirety; (2) **DISMISSES** Defendant's Motion to Vacate (Doc. 119) **WITHOUT PREJUDICE**; (3) **DENIES** any requested certificate of appealability; and (4) **CERTIFIES** that that an appeal would be objectively frivolous.

IT IS SO ORDERED.

Date: 10/18/13

/s/ Timothy S. Black
Timothy S. Black
United States District Judge